



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 25, 1960

Mr. Carl C. Hardin, Jr.
Executive Secretary
Texas State Board of Dental
Examiners
Austin, Texas

Opinion No. WW-893

Re: Does the Texas State Board
of Dental Examiners have
the authority to prohibit
Dentists from advertising
in telephone directories by
ads similar to the follow-
ing: "False Teeth & Repairs
- One Day Service."

Dear Mr. Hardin:

Your request for an opinion reads in part as follows:

"We have had several requests to stop the directory advertising of several dentists in metropolitan areas. These ads are similar to the attached.

"This department will appreciate your advising whether the attached is in violation and can be stopped by Board action."

The advertisement referred to in your request consists of a listing in the "yellow" section of a telephone directory in which the dentist has among other things put his name in boldface type in a border along with other information, as follows:

"False Teeth & Repairs - One Day Service"

Article 752b of Vernon's Penal Code reads in part as follows:

"Article 752b. Unprofessional conduct

"It shall be unlawful for any person, firm, or corporation to engage in or be guilty of any unprofessional conduct in the practice of dentistry, directly or indirectly. Any 'unprofessional conduct,' as used herein, means and includes any one or more of the following acts, to wit:

". . .

"(o) Advertising by means of a display advertisement, display signs or glaring light signs, electric or neon signs, or such signs containing as a part thereof the representation of a tooth, teeth, bridgework, plates of teeth or any portion of the human head, or using specimens of such in display, directing the attention of the public to any such person or persons engaged in the practice of dentistry; (Emphasis added)

". . ."

Article 752c of Vernon's Penal Code provides for the enforcement of Article 752b and reads in part as follows:

"Article 752c. Licenses, Refusing, Revoking, Cancelling, and Suspending of

"Section 4. The State Board of Dental Examiners shall, and it shall be their duty, and they are hereby authorized to revoke, cancel or suspend any license or licenses that may have been issued by such Board, if in the opinion of a majority of such Board, any person or persons to whom a license has been issued by said Board to practice dentistry in this State, shall have, after the issuance of such license, violated any of the provisions of the Statutes of the State of Texas relating to the practice of dentistry in

this State, or any of the provisions of Chapter 7, Title 12 of the Penal Code of the State of Texas, or any amendments that may hereafter be made thereto. All revocations, cancellations or suspensions of licenses by the Texas State Board of Dental Examiners shall be made as hereinafter provided.

" . . . "

Prior to 1947 Section (o) of Article 752b did not include the first phrase (i.e., advertising by means of a display advertisement). This phrase was added to Section (o) by an amendment in 1947 following the case of State Board of Dental Examiners v. Bickham, 203 S.W. 2d 363 (no writ history), in which the Court held that newspaper ads were not included in the term "large display signs." On this point the Court said:

"Courts cannot extend subdivision (o), which forbids advertising by means of 'large display signs,' to newspaper advertisements. The statute limiting 'large display' to 'signs,' excludes 'display ads.' 'Signs' are not 'ads.' It is unfortunate that the Texas Legislature limited such acts of advertising to 'signs,' instead of providing, as is the law of Missouri, Oregon, Wisconsin, and other States to include unlawful advertising by means of 'large display,' either by 'signs,' or 'ads,' without limitation as to where such advertisement shall be placed."

"Display Advertising" as defined by Webster's New International Dictionary is advertising intended to attract by its combination of copy, border, white space, illustration, etc. Webster further defines display in reference to printing as making conspicuous by large or prominent type or by varying the length of lines.

In view of the foregoing, it is our opinion that the advertisement referred to in your request is a violation of Subdivision (o) of Article 752b, Vernon's

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Penal Code. You are further advised that by virtue of Article 752c, Vernon's Penal Code, the State Board of Dental Examiners is authorized to revoke, cancel or suspend the license of any dentist found guilty of violating Article 752b, Vernon's Penal Code.

S U M M A R Y

Advertising in the "yellow" pages of a telephone directory by means of a display advertisement is a violation of Article 752b, Vernon's Penal Code. The State Board of Dental Examiners is authorized by Article 752c to revoke, cancel or suspend the license of any dentist found guilty of violating Article 752b, Vernon's Penal Code.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
Robert A. Rowland
Assistant

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APPROVED:

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore